ORIGINAL

No. 85784-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

[CT. APP. DOCKET No. 64545-5-I]

BRANDON APELA AFOA,

Respondent,

v.

PORT OF SEATTLE,

Petitioner.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Respondent BRANDON APELA AFOA is the plaintiff below, in this action for damages arising out of a workplace accident in the Air Operations Area of the Seattle-Tacoma International Airport, which rendered Mr. Afoa paraplegic.

II. ISSUE PRESENTED FOR REVIEW

Mr. Afoa does not present any issue for review, and requests that review be DENIED. The issue the Port is raising, corrected to conform to this record, is whether the owner and major employer of employees working on a common jobsite, who retains control over the manner of performance of ground services performed under its contract with EAGLE, owes a common-law and statutory WISHA duty to provide a safe workplace to EAGLE's employees. The common-law answer to this question has been "yes" since at least *Kelley v. Howard S. Wright Const. Co.*, 90 Wn.2d 323, 330, 582 P.2d 500 (1978), and the statutory WISHA answer has been "yes" since at least *Stute v. PBMC, Inc.*, 114 Wn.2d 454, 460, 788 P.2d 545 (1990). There is no matter of "first impression" here.

III. STATEMENT OF THE CASE

As accurately stated by Division One:

> Brandon Afoa was injured as a result of collision while he was operating a powered industrial vehicle on the airplane ramp at Seattle-Tacoma International Airport, which is owned

> and operated by the Port of Seattle. Mr. Afoa worked for Evergreen Aviation Ground Logistics Enterprises, Inc. ("EAGLE"). EAGLE provided "aircraft ground handling services" at the airport, including aircraft movement and loading and unloading aircraft cargo and baggage, under a "license agreement" with the Port. Afoa claims the brakes and steering on the vehicle failed while he was operating it, causing him to collide with a broken piece of equipment that had been left on the tarmac. The piece of equipment fell on him, crushing his spine and leaving him paraplegic. Afoa sued the Port, alleging it breached common law and statutory duties by failing to provide him with a safe workplace.

Afoa v. Port of Seattle, Pet.Rev. App. A, at 2 (Div. 1).

The Port is the property owner of the Seattle-Tacoma International Airport. The evidence is undisputed that the Port is also a major employer with respect to the common jobsite where the accident occurred, with approximately "22,000 airport employees." CP 363. These employees include both the Ramp Patrol and the Port Police, who patrol the airfield area where the injury to Mr. Afoa occurred, to enforce detailed regulations covering many aspects of vehicle operation and maintenance, as well as the storage of equipment. CP 291-317, 349-53.

The trial court granted summary judgment dismissal; the Court of Appeals, Division One, reversed in a unanimous opinion. *Afoa v. Port of Seattle,* App. A at 1-2. Applying this Court's decisions in *Kamla v. Space Needle Corp.,* 147 Wn.2d 114, 119, 52 P.3d 472 (2002), *Stute v. PBMC, Inc.,* 114 Wn.2d 454, 460, 788 P.2d 545 (1990), *Hennig v.*

Crosby Group, Inc., 116 Wn.2d 131, 134, 802 P.2d 790 (1991), and *Kelley v. Howard S. Wright Const. Co.*, 90 Wn.2d 323, 330, 582 P.2d 500 (1978), the Court of Appeals found that the dispositive issue on common-law and statutory liability was retention of control over the manner in which EAGLE's work was performed. *Afoa v. Port of Seattle,* App. A at 4-5. Based on exhaustive analysis of the factual record in this matter, the Court of Appeals found that Mr. Afoa had raised genuine issues of material fact on whether the Port retained control over the manner of performing the work, and therefore it reversed the grant of summary judgment. *Id.* at 7-9.

In its Statement of the Case, the Port asserts it "did not and does not employ, manage, or supervise EAGLE or any of EAGLE's employees, including Brandon Afoa, either directly or indirectly." Pet.Rev. at 3. This crucial statement of supposed "fact" is contrary to the record on appeal. The Court of Appeals specifically rejected this exact assertion after canvassing the record, because the record demonstrates substantial (1) PORT power to control the performance of duties by EAGLE and its employees; and (2) many instances of the Port's actual control of performance of duties by EAGLE and its employees. *Id.* at 7-9 & 9-10. For example, in addition to many detailed Port regulations pertaining to operation and maintenance of vehicles in the air operations

area, CP 141-68, 184-97, the Port regulations require that EAGLE and its employees "shall comply with written or oral instructions issued by the Director [of Aviation of the Port] or Port employees to enforce these regulations," CP 141 ¶ 1, and the license agreement between the Port and EAGLE grants use of the airfield area "subject at all times to the exclusive control and management by the Port." CP 402 § 2.1.

This record amply supports Division One's finding of disputed issues of material fact on the dispositive issue of right to control the manner of work. This case comes down to factual analysis of the record, and there is nothing here that comes close to requiring the attention of the Supreme Court.

III. ARGUMENT – REVIEW SHOULD BE DENIED

A. Standards for Acceptance of Review

The Port seeks review under RAP 13.4(b)(1), (2), and (4).

The Port is incorrect in its assertion that its Petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4). Instead, Division One engaged in routine application of existing law that permits liability when a jury question is raised as to the power of control over contractors and the shared jobsite, by a landowner who is the employer of some of the employees on the jobsite. The Port's effort to "juice this up" into an

"issue of first impression" is based on its weak, formalistic argument that the fact that it labeled its agreement with EAGLE a "license" somehow exempts it from the substantial weight of authority focusing on who has effective power of control over safety at the workplace. The Port's argument is nothing but "magic words" formalism, which Division One correctly rejected, and which creates no substantial issue of public importance. For example, the operative substance of the so-called "license agreement" is plainly to permit EAGLE to perform ground services which benefit the Port:

> Licensee's only use of the Premises shall be for the purpose of providing aircraft ground handling services within the AOA [airfield operations area], including loading/ unloading aircraft cargo, baggage or mail, aircraft movement and/or aircraft maintenance, interior/exterior aircraft cleaning, and aircraft water, lavatory and fueling services and for storing/parking Licensee's equipment.

CP 205 ¶ 5 ("License Agreement" between Port and EAGLE).

The Port's argument that there is a conflict with other decisions of this Court, or of other Divisions of the Court of Appeals, must fail. Far from being in conflict, Division One ably considered and appropriately applied *Kamla, Hennig, Stute,* and *Kelley,* to the common-law and statutory liability issues. *Afoa v. Port of Seattle,* App. A at 4-7. Similarly, it appropriately applied *Beebe v. Moses,* 113 Wn. App. 464, 467-68, 54 P.3d 188 (2002), to find that Afoa was a business invitee because his

entrance on the premises was of mutual benefit to himself and to the Port, in a manner that does not create any conflict with *Thompson v. Katzer,* 86 Wn. App. 280, 286, 936 P.2d 421 (Div. 2 1997), or *Beebe v. Moses,* 113 Wn. App. 464, 467-68, 54 P.3d 188 (Div. 3 2002). *Afoa v. Port of Seattle,* App. A at 15. The Court of Appeals was well within its power to reject on summary judgment the Port's incredible assertion that it did not "invite" the EAGLE employees, in the face of evidence that the license agreement granted such employees ingress and egress for ground services purposes, CP 203-04, and that the Port tested and then licensed EAGLE employees for operation of vehicles in the air operations area, CP 291-317.

As the Commissioner is aware, a decision that applies and even distinguishes precedents is not the same as a decision which "conflicts" with other decisions within the meaning of RAP 13.4(b)(1) and (2). Division One applied prior precedents, but its decision in no way rejected or directly conflicts with prior precedents. Review should be denied.

B. Review is Not Warranted of the Common-Law Workplace Liability or Statutory WISHA Holdings

1. Applicable Law on Common-Law and Statutory Liability for Common Workplace Injuries

In *Kelley v. Howard S. Wright Construction Co., supra,* 90 Wn.2d 323, an employee of a subcontractor brought an action against the general

contractor for injuries suffered when he fell from a building under construction. The Supreme Court held that, despite the "general rule" that one who engages an independent contractor is not liable to the employees of that contractor, it was proper to deny summary judgment to the general contractor, Wright. *Id.* at 330. According to this Court:

> A common law exception to the general rule of nonliability exists where the employer of the independent contractor, the general contractor in this case, retains control over some part of the work. The general then has a duty, within the scope of that control, to provide a safe place of work. The test of control is not the actual interference with the work of the subcontractor, but the right to exercise such control.

Id. at 330-31 (citations omitted).

This rule was carried forward in *Stute v. PBMC, supra,* 114 Wn.2d 454, and extended to the specific duty clause under the current version of WISHA, RCW 49.17.060(2), which provides: "Each employer: . . . (2) Shall comply with the rules, regulations, and orders promulgated under this chapter." As in *Kelley,* in *Stute* an employee of a subcontractor brought suit against the general contractor after he was injured on job site. As in *Kelley,* the injured employee was not an employee of the general contractor. In holding that the employees of subcontractors have a right of action against the general contractor for violation of this portion of the statute, this Court held:

> that the specific duty clause is not confined to just the employer's own employees but applies to all employees who may be harmed by an employer's violation of the WISHA regulations. This furthers the purpose of WISHA to assure safe and healthy working conditions for every person working in Washington.

Stute, supra, 114 Wn.2d at 458 (citations omitted).

"In *Kelley,* general supervisory functions were sufficient to establish control over the work conditions of the subcontractor's employee." *Stute, supra,* 114 Wn.2d at 461. Quoting a Michigan case relied on in both *Kelley* and *Stute,* the Court in *Stute* explained the overriding workplace safety rationale:

> "Placing ultimate responsibility on the general contractor for job safety in common work areas will, from a practical, economic standpoint, render it more likely that the various subcontractors being supervised by the general contractor will implement or that the general contractor will himself implement the necessary precautions and provide the necessary safety equipment in those areas."

Stute, supra, 114 Wn.2d at 461 (*quoting, Funk v. General Motors Corp.,* 392 Mich. 91, 104, 220 N.W.2d 641 (1974)).

Significantly, neither *Kelley* nor *Stute* turn at all on the formal distinctions between the parties, or magic words used in their contracts. The substantive question is the right to control, and the substantive policy is determining which party is best able to ensure worker safety in a

common workplace.[1] This policy of ensuring safety for all employees explains why the duty of compliance with WISHA falls on the party "in the best position to ensure compliance with safety regulations." *Stute, supra,* 114 Wn.2d at 463. While that party was the general contractor in *Kelley* and *Stute,* in other cases it has been recognized that the owner of the property where the work is performed is the party best able to ensure compliance with safety regulations. *Kinney v. Space Needle Corp.,* 121 Wn. App. 242, 249, 85 P.3d 918 (Div. 1 2004); *Doss v. ITT Rayonier, Inc.,* 60 Wn. App. 125, 127 n.2, 803 P.2d 4 (Div. 2 1991); *Weinert v. Bronco Nat'l Co.,* 58 Wn. App. 692, 696, 795 P.2d 1167 (Div. 1 1990).

Furthermore, the obligation to comply with the WISHA special duty clause in no way depends on a relationship of employer-employee, or even general contractor-subcontractor, between the defendant and the plaintiff or his/her employer, so long as the defendant employs *someone* at

[1] In *Hennig v. Crosby Group, supra,* 116 Wn.2d 131, and *Kamla v. Space Needle Corp., supra,* 147 Wn.2d 114, this Court clarified that mere control over aspects of contract administration, as opposed to the means and methods of performing the work, was not sufficient to impose *Kelley/Stute* liability. Nothing in these decisions vitiates the rule of *Kelley/Stute* – indeed, both cases rely on the basic rule that the power to control the means of work in a common workplace gives rise to liability, and then move on from there. *See, Hennig, supra,* 116 Wn.2d at 134 (*quoting Kelley,* court notes the "exception to the general rule of nonliability" for retained "control over some part of the work"); *Kamla, supra,* 147 Wn.2d at 120-21 (Court rejects Space Needle's request that it modify the "retained control" test of *Kelley*: "We cannot accept Space Needle's implicit invitation to abandon the 'retained control' inquiry. When we distill the principles evident in our case law, the proper inquiry becomes whether there is a retention of the right to direct the manner in which the work is performed . . ..").

the jobsite. As the Court of Appeals correctly held, the Port fits within the definition of "employer" under WISHA, RCW 49.17.020(4) because it "engages in . . . business . . . in this state and employers one or more employees," and therefore it is subject to the duties imposed by WISHA over this common jobsite. *Afoa v. Port of Seattle,* App. A at 12-13.

2. The Port Raises No Issue of Substantial Public Importance on Workplace Injury Liability

The Port attempts to manufacture an issue of substantial public importance by harping on the fact that its contract with EAGLE is called a "license agreement" instead of a "subcontract". That is a formal distinction without a difference. The Court of Appeals got it exactly right, when it held:

> The Port's argument that it owes no duty to Afoa because EAGLE is not an independent contractor with the Port and its contract with EAGLE is merely a "license agreement," misses the mark. Whether the agreement between the Port and EAGLE is called a "license agreement" or any other term is immaterial. Nor does it matter that the Port does not consider EAGLE to be an "independent contractor." The issue is whether the Port has a contractual relationship with EAGLE by which it retained control over the manner in which EAGLE provided ground services such as loading and unloading aircraft cargo and baggage and aircraft movement. The Port contends that it does not. But an examination of the agreement between EAGLE and the Port, when viewed in a light most favorable to Afoa, reveals questions of material fact on this issue.

Afoa v. Port of Seattle, App. A at 7.

The Port argues it did not retain power over EAGLE's work in its Regulations, by trying to draw a distinction between conditioning the use of its land as a licensor, and retaining control over the manner of work. *Pet.Rev.* at 12. This theoretical distinction is ethereal and ignores the actual evidence here. For example, the Port regulations provide: "No person shall use the roads . . . in such manner as to hinder or obstruct their proper use," CP 143 ¶ 10(b); "All vehicular equipment in the Air Operations Area . . . must at all times comply with any lawful signal or direction of Port employees," CP 162 ¶C(1); "No person shall park any motor vehicle or other equipment or materials in the Air Operations Area of the Airport except in a neat and orderly manner and at such points as prescribed by the Director," CP 164 ¶ C(12); "No person shall operate any motor vehicle or motorized equipment in the Air Operations Area of the Airport unless such motor vehicle or motorized equipment is in a reasonably safe condition for such operation," CP 164 ¶ C(15). All this and more is rigorously enforced by Port Ramp Patrol and Port Police against EAGLE employees, CP 349-53, right down to when and where airplanes were to be moved, CP 345, removal of defective equipment from the airfield area, CP 351 (deicer missing headlight), CP 352-53 (water truck with broken brake light), where to fuel, where to unload containers, and how to tow a train of dollies. CP 349-51. Division One was well

within the record to find a disputed issue of material fact as to whether the Port controlled the manner of EAGLE's work.

The Port relies heavily on the abstractions of the Restatement (Second) of Agency, rather than on actual Washington case law, which clearly sets forth the determinative test of right to control the performance of the work. The Port raises the Second Restatement of Agency for the first time in its Petition for Review. It was not cited to in briefing submitted to the Court of Appeals. Assuming, *arguendo*, that the Restatement of Agency is applicable, the Port fails to present an accurate picture, by relying upon the definitions of "independent contractor" and "employer" from the Second Restatement of Agency, which have been superseded by the provisions of the Third Restatement of Agency. *Pet.Rev.* at 5. The Third Restatement emphasizes the fact that in all agency relationships "the agent shall act . . . subject to the principal's control," Restatement (Third) Agency §1.01 (2006) (Agency defined). The Third Restatement rejects reliance on categories such as "independent contractor":

> Agency encompasses a wide and diverse range of relationships. . . . [T]he common term "independent contractor" is equivocal in meaning and confusing in usage because some termed independent contractors are agents while others are nonagent service providers. . . . This Restatement does not use the term "independent contractor," except in discussing other material that uses the term.

Restatement (Third) §1.01 cmt. c. The Third Restatement instead makes it clear that the substance of the relationship governs over form:

> Whether a relationship is characterized as agency in an agreement between parties or in the context of industry or popular usage is not controlling.

Restatement (Third) Agency §1.02.

> Whether a relationship is one of agency is a legal conclusion made after an assessment of the facts of the relationship and the application of the law of agency to those facts. Although agency is a consensual relationship, how the parties to any given relationship label it is not dispositive.

Restatement (Third) Agency §1.02, cmt a.

> It is appropriate for the court to consider whether the parties' characterization serves a function other than circumventing an otherwise-applicable statute, regulation, or rule of law . . ..

Restatement (Third) Agency §1.02, cmt b. In this case, the Court of Appeals appropriately applied the law creating an exception to nonliability for right of control of the workplace, to the facts of the right of control evidenced by the Port-EAGLE "license agreement" and the Port regulations. The Court of Appeals did not rely upon the characterization of the relationship made by the Port, which seems to serve no purpose other than attempting to evade the *Kelley/Stute* rules of common-law and statutory WISHA liability. That is the proper approach, exactly in accord

with Washington law and the Third Restatement, and it raises no issue of substantial public importance needing review by this Court.

3. There is No Conflict of Authority on Workplace Injury Liability

Division One's rejection of the label of "license agreement" as controlling in this case is also in accord with – and definitely NOT in conflict with – the decisions of other Divisions and this Court. It is well established that when considering questions of control, Washington courts look beyond the labels in the contracts and consider other factors to determine the relationships between the parties. See McLean v. St. Regis Paper Co. 6 Wn. App. 727, 732, 496 P.2d 571 (Div. 2, 1972), *quoting* Carter v. King County, 120 Wash. 536, 208 P. 5 (1922) ("The test [of control] always is: To whom is the person in question subject as to the manner in which he shall do his work?"). "Whether a right to control has been retained depends on the parties' contract, the parties' conduct, and other relevant factors." Phillips v. Kaiser Aluminum, 74 Wn. App. 741, 875 P.2d 1228 (Div. 2, 1994). Division 2 describes how questions of control are resolved:

> **[A] written contract provision disclaiming control is not determinative on the question of control.** The relationship of the parties, as amplified by the operating manual, the nature of the undertaking itself, and the amount of control actually exercised in performance of the undertaking, are the determinative factors.

Jackson v. Standard Oil Co. of California 8 Wn. App. 83, 93, 505 P.2d 139, 145 (Div. 2, 1972) (emphasis added).

"Usually the question of control or right of control is one of fact for the jury." Baxter v. Morningside, Inc. 10 Wn. App. 893, 898, 521 P.2d 946, 949 (Div. 2, 1974). "If the evidence conflicts regarding the relationship between the parties at the time of the injury or if it is reasonably susceptible of more than one inference, then the question is one of fact for the jury." Chapman v. Black, 49 Wn. App 94, 99, 741 P.2d 998, 1002 (Div. 1, 1987) (citing Massey, 15 Wn. App at 785 and Baxter, 10 Wn. App. at 898).

The Port suggests there is a conflict between the decision in this case, and language in *Kamla,* stating jobsite owners are not sufficiently analogous to general contractors to justify imposing WISHA liability on them. *Pet.Rev.* at 15. This so-called "conflict" is created only by taking language of *Kamla* out of context. The Court in *Kamla* framed this discussion saying:

> Our first question is whether jobsite owners are **per se liable** under the statutory requirements of RCW 49.17.060. They are not.

Kamla, supra, 147 Wn.2d at 123 (emphasis added). The Court concludes its discussion of this issue by holding:

> **If a jobsite owner does not retain control over the manner in which an independent contractor completes its work,** the jobsite owner does not have a duty under WISHA to 'comply with the rules, regulations, and orders promulgated under [chapter 49.17 RCW].'

Kamla, supra, 147 Wn.2d at 125 (emphasis added). Read together, this means that the Court held that there is no *per se* liability for jobsite owners, but that if the jobsite owner retains control over the manner in which the work is completed, then WISHA liability can be imposed. Furthermore, this part of the discussion does not detract from the common-law liability discussion that precedes it, where the Court plainly would have imposed liability if it had found that the Space Needle controlled the methods of work. *Id.* at 119-22. Finally, because the Port is potentially liable under WISHA not merely as a jobsite owner, but also as an "employer" on a common jobsite who meets the definition of "employer" under RCW 49.17.020(4), *see, Afoa v. Port of Seattle,* App. A at 13, this is not even a case in which liability is imposed solely against an owner. Even if the Port was correct in its over-reading of *Kamla* regarding owner liability, that would have no effect on its statutory liability as an employer under WISHA.

Division One's decision in this case is also fully consistent with a major recent decision of Division Two, *Arnold v. Saberhagen Holdings,* 157 Wn. App. 649, 240 P.3d 162 (Div 2 2010). *Arnold* was an appeal

from summary judgment dismissal of mesothelioma death claims against the general contractor, arising out of a subcontractor's employees' exposure to asbestos at the Lockheed Ship Yards. *Id.* at 653-54. Applying the "control over the common work area" standard of *Kelly*, Division Two reversed summary judgment. *Id.* at 664-66. Likewise, in our case, the Port was a major employer with primary control over a common workplace used by its own employees and the employees of numerous contractors, and therefore it is well situated to ensure the safety of all employees working in the airfield area.

Far from being in conflict, the present decision of Division One is in accord with substantial law applied in Washington since at least 1978, the year *Kelley* was decided.

C. The Port Fails to Raise an Issue of Substantial Importance or a Conflict of Authority regarding Premises Liability

The Port argues that EAGLE and therefore Mr. Afoa were not business invitees on the Port's premises because: (1) there was no mutuality of interest in the subject to which the visitor's business or purposes relates, *Pet.Rev.* at 18; and (2) "there is no evidence whatsoever that the Port 'invited' either EAGLE or Mr. Afoa onto" the airfield area, *Pet.Rev.* at 19. Both these points are incorrect; but first, we must point out that even if they were correct, that would not suffice to trigger review. The

Washington Supreme Court does not sit as a Court of Error, but instead reviews only matters of systemic significance – issues of substantial public importance, or direct conflicts in lines of precedent. The Port fails to even argue for either on this issue, so review should be denied.

Assuming, without conceding, that the Port is suggesting some sort of conflict between Division One's decision in this matter, and the two cases to which it cites – *Thompson v. Katzer,* 86 Wn. App. 280, and *Beebe v. Moses,* 113 Wn. App. 464 – it is quickly apparent that Division One has not *rejected* the *Beebe/Thompson* rule for determining who is a business invitee, but *applied* it. Division One quoted and applied the rule from *Beebe* (which in turn quotes *Thompson*) that " '[t]he ultimate goal is to differentiate (1) an entry made for a business or economic purpose that benefits both entrant and occupier, from (2) an entry made for a purpose that either (a) benefits only the entrant or (b) is primarily familial or social.'" *Afoa v. Port of Seattle,* App. A at 15. *This is not a "conflict" of authority within the meaning of RAP 13.4(b)(2).* A conflict of authority between Divisions exists when one Division holds "A", and another considers the question, rejects the first Division's outcome, and instead holds "B".

As for the substance of the application of the *Beebe/Thompson* rule, Division One got it right here. First, there was a real mutuality of

interest in the subject of Mr. Afoa's work. The Port-EAGLE "license agreement" plainly states that EAGLE must pay to the Port a $500 license fee annually, plus a land rent of $0.72 for each square foot of parking and storage space it uses, so the Port benefits financially and directly from EAGLE's work. CP 204. Second, the Port charges gate fees to the airlines, who in turn could not operate without ground services like those provided by EAGLE and Mr. Afoa to move their aircraft to and from the gates, and load/unload baggage and supplies. CP 418-427, CP 552. Third, there was an actual invitation in the form of a license agreement the Port entered into with EAGLE, CP 204-13, which expressly grants a right of ingress and egress and movement within the airfield area to EAGLE and its employees, for the purposes of providing ground services within the airfield area, CP 204 ¶3, CP 205 ¶5, and testing and issuance of a license to Mr. Afoa to operate vehicles in the airfield area – including the powered industrial tractor involved in the accident. CP 291-317.

IV. CONCLUSION

There is no issue of substantial public importance or conflict in authority raised here. Instead, the Port presents a false issue based on an untenable formalistic argument, in an effort to lure this Court into reviewing a case that turns on disputed issues of material fact. For all the foregoing reasons, the Petition for Review should be DENIED.

Dated at Seattle, WA, this 30 day of March, 2011.

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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Plaintiff / Respondent,

vs.

PORT OF SEATTLE, a Local Government Entity in the State of Washington,

Defendant / Petitioner.

No. 85784-9

CERTIFICATE OF SERVICE

I certify that on today's date I served via United States Mail, postage pre-paid to:

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- RESPONDENT'S ANSWER TO PETITION FOR REVIEW

Dated this 31st day of March, 2011.

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Dear Clerk of the Supreme Court of Washington:

Attached please find RESPONDENT'S ANSWER TO PETITION FOR REVIEW in the matter of Brandon Apela Afoa v. Port of Seattle, Supreme Court No. 85784-9. This is also being served on petitioner's counsel by email and U.S. mail, as indicated. Please confirm receipt.

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